IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 218 OF 2002

Communidade of Candolim,
represented by its Attorney
Mr. A. J. Pinto,
having office at Candolim,
Bardez, Goa. ... Appellant

versus

Dy. Collector(North),
Panaji, Goa. ... Respondent

Mr. M. S. Sonak, Advocate for the Appellant.

Mr. A. N. S. Nadkarni, Advocate General with Mr. H. D. Naik, Additional Government Advocate for the State.

CORAM: B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 28TH SEPTEMBER, 2004.

ORAL JUDGMENT(PER B.H.MARLAPALLE, J.)

This appeal under Section 4 of the Land Acquisiton Act, 1894 arises from an Award passed by the Reference Court in Land Acquisition Case No. 20 of 1987 whereby the reference was rejected

and the market value of Rs. 10/- per sq. meter awarded by the Land Acquisition Officer was confirmed.

2. By Notification under Section 4(1) of the Land Acquisition Act, 1894(for short, the Act) published in the Official Gazette on 7th January, 1983, the State Government acquired the land of the Appellant admeasuring 3,13,630 sq. meters for recreational and sports facilities including Golf course, helipad etc. at Aguada Plateau, Candolim, Bardez, Goa. The Land Acquisition Officer by his Award dated 21st March, 1986, fixed the market value of the land at Rs.10/- per sq. meter and not being satisfied with the said compensation rate, the Appellant/claimant had moved a reference under Section 18 of the Act and a reference came to be rejected by the earlier Award dated 24th February, 1992. The said Award was challenged by this Court in First Appeal No.68 of 1992 and it was disposed off by Judgment and Order dated 6th June, 2001. The reference was remanded for recording additional evidence of both the parties, in respect of the Award passed in Land Acquisition Case No.33 of 1983. Accordingly, the Appellant/claimant placed on record a copy of the said Award and A.W.2, Mr. H. R. Chico was re-examined on 5th April, 2002. There was no further additional evidence led by the claimant. The learned Additional District Judge, who passed the impugned Award dated 29th April, 2002, framed the following issue:-

Whether the Applicant proves that the compensation should be based on a rate of Rs.300/- per sq. meter?

3. On assessment of the additional evidence and by relying upon the reasoning given by the learned District Judge in the earlier Award dated 24th February, 1992, the learned Additional District Judge held that the claimant could not place on record any additional evidence in support of its claim that the market value of the subject land was required to be fixed at Rs.300/- per sq. meter.

3. The learned Additional District Judge noted that a copy of the Award in Land Acquisition Case No.33 of 1983 was already on record through the evidence of A.W.1, Mr. Joaquim Celestao Pinto, who had appeared as a special Attorney of the Appellant/Communidade and it was marked as Exh.A-1/C. On the claimant placing a copy of the said Award on record afresh after the remand by this Court, it came to be marked as Exh.20. In addition to this Award of comparable instance, there were two more documents which were relied upon by the claimant namely the sale instance at Exh.AW1/A and Exh.AW1/B. The Sale Deed at Exh.AW1/A was in respect of a plot of land admeasuring 264 sq. meters and the land was sold at the rate of Rs.24.50 per sq. meter in the year 1975. The land in survey no.253 was situated at a distance of 2 kms. from the acquired land. The second sale instance at Exh.AW1/B was from survey

no.197/10 wherein a plot admeasuring 12 sq. meters was acquired by the Government somewhere in the year 1983 and the market value was fixed at Rs.36.40 per sq. meter. The learned District Judge in his Award dated 24th February, 1992, had noted from the record that the land in survey no.253 in sale instance at Exh.AW1/A was located at a distance not less than 3 kms. from survey no.197 and the land in sale instance at Exh.AW1/B was a very small plot of 12 sq. meters which could not be the comparable sale instance. The learned District Judge had also taken into consideration the Award in Land Acquisition Case No.33 of 1983 which was the land from survey no.146 and was located at a distance of 2½ kms. from the subject land. The Award was in respect of land admeasuring 3,730 sq. meters and it was on the Candolim beach. He also noted that A.W.2, H. R. Chico, while in the witness box had admitted that the said land under Land Acquisition Case No.33 of 1983 was totally different from the present claimant's land. All these three sale instances were duly assessed by the learned District Judge and that they were very small plots. He also noted that the lands were located in the heart of Candolim village whereas the land of the claimant was located at a distance of about 3 kms. from the Candolim market. The claimant had failed to establish parity in respect of the instances relied upon as noted by the learned District Judge.

4. On remand, A.W.2, H. R. Chico, was recalled and he tried to emphasise that the subject land was deserving more market value

on the grounds that it was a plateau on top of the hill from where one could get the view of Panjim city, Arabian Sea etc. He further stated that there was a question raised in the Assembly and the Revenue Minister had replied that the subject land was given on lease for 10 years and the State Government had received Rs.50,00,000/- from the Fort Aguada Beach Resort against the lease of Rs.1,00,00,000/-. In his cross-examination, A.W.2, H. R. Chico, agreed that in his earlier deposition before remand, he had described that the land covered by Land Acquisition Case No.33 of 1983 was a land from developed area and close to Candolim market and that the nature of the subject land was totally different from the land covered by the said Award at Exh.20.

5. The learned Additional District Judge considered the Award in Land Acquisition Case No.33 of 1983 and noted that the mere production of the Award on remand did not make any improvement at all, in support of the claim of market value at Rs.300/- per sq. meter. He held that it was necessary for the claimant to show by additional evidence as to how the sale instance or the Award at Exh.20 was a comparable sale instance to enhance the market value and fix the same at Rs.300/- per sq. meter. He referred to the additional deposition of A.W.2, H. R. Chico, and noted that the subject land being located on a plateau and being a plain land itself could not be a reason to fix its market value at Rs.300/- per sq. meter. On the other hand, the land covered by Land Acquisition Case No.33

of 1983 was located close to the market and was more developed area and was sandy which was at sea level and hence it could not be relied in support of the claimant's plea to fix the market price at Rs.300/- per sq. meter.

6. In a way, challenge in this appeal is against both the Awards inasmuch as the Award dated 29th April, 2002, has to be read as an extension to the earlier Award dated 24th February, 1992, which was not set aside by this Court while remanding the reference in First Appeal No.68 of 1992.

7. Mr. M. S. Sonak, the learned Counsel for the Appellant/Communidade of Candolim strenuously urged before us that fixing the market value at Rs.10/- was nothing but a pittance and the subject land being a plateau with more sceneric value deserved much more market value and more so by considering the fact that it was connected by a tar road and had development activities around it. It was pointed out that the Aguada Beach Resort was located very close to the subject land and the Taj Hotel had acquired huge property(land) and at a much higher compensation. It was further submitted that the claimant's other plot of land located in survey no.95 was severed and became inaccessible because of the subject acquisition. This was an additional factor which the Reference Court ought to have noted but in the impugned Award, this ground has not been considered at all, urged the learned Counsel.

8. Section 23 of the Land Acquisition Act sets out the parameters to be considered for determining the amount of compensation to be awarded for the land under acquisition. The claimant had placed reliance, as noted earlier, on three documents i.e. Exhs.AW1/A, AW1/B and AW1/C(Exh.20). The Reference Court on both the occasions found that they were not comparable sale instances and for sound reasons. The market value of the land could be considered either on the basis of comparable sale instances, the income generated from it or on the basis of the valuation made by the experts. In the instant case, admittedly, the land was not under cultivation in the known recent part and it was a barren land even without any plantation activity. The mere fact that it was a plateau cannot be a reason to hold that the market value fixed by the Land Acquisition Officer was under estimated or was a pittance awarded. The sale instances relied upon by the claimant were of the lands located at a distance beyond 2 kms. and near the market as well as in a developed area. There was no evidence to fix the market value of the subject land on the basis of comparable sale instances and even on remand by this Court, the learned Additional District Judge rightly noted that on remand, the claimant had sufficient opportunity to bring additional evidence in support of its case but nothing was done beyond reproduction of a copy of the Award in Land Acquisition Case No.33 of 1983.

9. The learned Advocate General pointed out that the subject land does not have future building potential in view of the restrictions it suffers under various statutory provisions. In this regard, he relied upon the decision in the case of **Chimanlal Hargovinddas** v. **Special Land Acquisition Officer(**AIR 1988 SC 1862) and submitted that there are more than one minus factors which would go to show that the subject land could not be developed for either building or any commercial activity in future. The large area of this land as well as the special disadvantages would gather any purchaser and there would be thus no potentiality for development.

The subject land belongs to the claimant/Communidade and, therefore, it is not a free hold land. Under Article 153 of the Code of Communidades, the Governor General has the powers to authorize the exchange of lands of Communidades and determine its requests for grant of leases. Under Articles 179 and 180(Chapter VII regarding insolvent Communidades), the lands belonging to Communidades can be sold only when in liquidation proceedings the assets are found to be inadequate. In short, the land belonging to Communidades could not be utilised for a purpose which will enhance its market value and the restrictions imposed on such land under the Code of Communidades clearly shows that its free use is not permissible. When the land under acquisition suffers statutory restrictions, the obvious consequences that follow is on its market

value and, therefore, such land cannot be compared with other sale instances in respect of the free hold land.

10. We have noted from the Award passed by the Land Acquisition Officer that he had considered the sale instance of 1982 in respect of another land admeasuring 12,160 sq. meters from survey no.100/0 of Village Candolim and the market value fixed was at Rs.9.95 per sq. meter. He appears to have taken this price to be more appropriate and comparable keeping in mind that the Notification under Section 4(1) of the Act was published on 7th January, 1983 in respect of the subject land. What is fair and reasonable and adequate market value is a question of fact depending upon the evidence adduced, circumstantial evidence and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of Notification under Section 4(1) of the Act. If so considered, it is evident that the subject land had no marketability on account of more than one statutory restrictions it suffered.

11. Regarding the severance of the land in survey no.95, it appears that in the application submitted under section 18 of the Act, the sale issue was not specifically placed for consideration except the

statement that the Land Acquisition Officer did not consider to award compensation in respect of 500 sq. meters of land which had been rendered useless to the Applicant, it being wholly land locked on all sides and without any let out whatsoever. In the depositions of A.W.1 and A.W.2, an attempt was made to bring on record that the said land had become inaccessible for the reasons that the acquired land from plot no.96 was fenced from all sides. The claimant's remedy for access or easementary rights may be before some other forum but at the same time, it was necessary for the claimant to place on record regarding the adversities the said plot suffered and lost its market value. Nevertheless, the restrictions suffered by the subject land would be equally applicable to the land in survey/plot no.95 as well.

12. This Court had remanded the reference in the earlier ground so as to provide an opportunity to the claimant to place on record additional evidence and more particularly it had sought to rely upon the Award in Land Acquisition Case No. 33 of 1983. Beyond placing a copy of the Award once again, the claimant did nothing further and the additional oral deposition of Mr. Chico did not make out any better case in support of its claim to fix the market value of the subject land at Rs.300/- per sq. meter. We may usefully refer to a 3 Judge Bench decision in the case of **Special Deputy Collector and another** v. **Kurra Sambasiva Rao and others** (AIR 1997 SC 2625) and reproduce the following observations:-

> "The burden of proof that the amount awarded by the Land Acquisition Officer/Collector is not adequate is always on the claimant. The burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the Land Acquisition Officer/Collector or that the Land Acquisition Officer/Collector proceeded on a wrong premise or applied a wrong principle of law. The object of the enquiry in a reference under Section 18 of the Act is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the sale transaction, the nature of the land, its suitability, nature of the use to which the lands are put to on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transaction in respect of lands covered by the same notification are all relevant factors to be taken into consideration in determining the market value" -
>
> Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence and probabilities arising in each case".

13. Thus, we find that on all counts the claimant could not prove its claim of Rs.300/- per sq. meter as the market value for the

subject land or for that matter higher market value than what was granted by the Land Acquisition Officer. Hence, the appeal fails and the same is hereby dismissed.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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